

1. The Office has objected to the improper use of trademarks throughout the application. Amendments have been made to the Specification and Claims to correct the use of the trademarks and to clearly identify the difference between KEVLAR and MYLAR materials through generic definition.

2. Claims 1-16 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 16 have been amended to properly define that which the applicant regards as the invention. More specifically, Claims 1 and 16 have been amended to redefine the interstitial area existing between the inner tank and outer tank by removing the reference to "space" which Office has interpreted to refer to "empty space".

3. Claims 2, 3 and 16 stand rejected under 35 U.S.C. 112, second paragraph. The Office states that the scope of Claims 2, 3 and 16 is uncertain due to the inclusion of an ASTM specification. Claims 2, 3 and 16 have been amended to remove the ASTM limitation.

4. Claims 4, 5 and 16 stand rejected under 35 U.S.C. 112, second paragraph. The Office asserts that the use of a trademark name in the claims renders the claims uncertain. Claims 4, 5 and 16 have been amended to remove the use of a trademark name and the appropriate generic definition has been substituted where appropriate.

5. Claims 1-16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McGarvey. The Office asserts that McGarvey discloses an above ground storage tank for flammable liquids having a secondary containment capability, the tank comprising an inner primary tank for storing liquid, an outer secondary tank encasing the primary tank and defining an interstitial space therebetween, an insulating foam material disposed in the interstitial space and a fire resistant textile material, insofar as applicant considers films to be textiles when film is not woven, sandwiched between foam materials and the inner primary tank. The Office further states that McGarvey discloses the present invention except for the film is not sandwiched between the foam material and the outer secondary tank. The Office contends that it would have been obvious to modify the position of the fire resistant material to be relocated in the interstitial space

between the foam material and the outer secondary tank. The Office further states that it would have been obvious to use KEVLAR or MYLAR as the fire resistant material since these materials are equivalent to the mixture of hydrate aluminum-iron magnesium silicate and Portland Cement and it is a matter of design choice as to which material is best.

The applicant respectfully traverses the Office's determination that it would have been obvious to modify the position of the fire resistant material to be relocated in the interstitial space between the foam material and the outer secondary tank. More specifically, McGarvey teaches the use of a mixture of hydrate aluminum-iron magnesium silicate and Portland Cement, commonly known as FENDOLITE. Due to the properties of Portland Cement, all combinations containing Portland Cement must be applied over metal, or wire lath or other suitable surfaces prepared with an approved bonding agent. Therefore, because the FENDOLITE is a mixture containing Portland Cement, it would need to be applied to the surface of the inner tank (a metal surface) and could not be applied directly to the foam material. As such, it would not be possible or obvious to modify the position of the fire resistant material taught by McGarvey.

The applicant respectfully traverses the Office's determination that it would have been obvious to use KEVLAR or MYLAR as the fire resistant material since these are equivalent to the mixture of hydrate aluminum-iron magnesium silicate and Portland Cement. KEVLAR and MYLAR are polymer, man-made, materials. More specifically, KEVLAR is an aramid polymer fiber and MYLAR is a polyethylene terephthalate polymer film. Hydrate aluminum-iron magnesium silicate, also known as VERMICULITE, is a member of the phyllosilicate group of minerals and is the geological name given to a group of hydrated laminar minerals which are magnesium aluminum iron silicates resembling mica in appearance and occurring in nature. Clearly, naturally occurring VERMICULITE and associated FENDOLITE, are not equivalent to man-made polymers KEVLAR and MYLAR. Additionally, one of the advantages taught by the present invention is the elimination of cement from the prior art, resulting in an extremely lightweight solution. While McGarvey reduces the weight of the apparatus through the use of foam insulation, he teaches the use of FENDOLITE, a cement mixture, for fire resistance, which does not result in a lightweight solution as taught by the present invention.

As described above, Claims 1 and 16 of the present invention, as amended, are not obvious in view of McGarvey. The applicant believes that Claims 1 and 16 are in condition for allowance:

6. Claims 2-15 depend from Claim 1, which has been shown to be allowable. Since each of Claims 2- 15, introduces additional patentable subject matter, the applicant believes that these claims, as amended, are in condition for allowance.

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 507-8558 is requested.

Very respectfully,

SMITH & HOPEN

By: 

Dated: April 15, 2002

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CERTIFICATE OF FACSIMILE TRANSMISSION

(37 C.F.R. 1.8 (a))

I HEREBY CERTIFY that this Amendment A, including Exhibit A, is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 3727, Attn: Stephen J. Castellano, (703) 872-9302 on April 8, 2002.

Dated: April 15, 2002


Deborah Preza